

ASSEMBLY BILL

No. 1092

Introduced by Assembly Member Goldsmith

February 27, 1997

An act to amend Sections 4104, 4106, and 4107 of, and to add Section 4104.5 to, the Public Contract Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 1092, as introduced, Goldsmith. Subletting and Subcontracting Fair Practices Act: bidding practices.

The Subletting and Subcontracting Fair Practices Act requires the entity taking bids for the construction of any public work or improvement to specify that any person making a bid or offer to perform the work shall, in his or her bid or offer, set forth the name and location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the work or improvement, or a subcontractor who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work according to specifications, in an amount in excess of $\frac{1}{2}$ of 1% of the prime contractor's total bid, or in the case of bids or offers for the construction of streets or highways, including bridges, in an amount in excess of $\frac{1}{2}$ of 1% of the prime contractor's total bid or \$10,000, whichever is greater. Under these provisions, if a prime contractor fails to specify a subcontractor or specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of $\frac{1}{2}$ of 1% of the prime

contractor's total bid the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. A prime contractor whose bid is accepted is also prohibited from subletting or subcontracting any portion of the work in excess of $\frac{1}{2}$ of 1% of the prime contractor's total bid as to which his or her bid did not designate a subcontract, except in the performance of change orders.

This bill would, instead, apply these provisions to the subletting or subcontracting of work in excess of 5% of the prime contractor's total bid. It would provide that any information requested by the entity taking bids concerning any subcontractor who the prime contractor is required to list, other than the subcontractor's name and location of business, may be submitted by the prime contractor up to 24 hours after the deadline established by that entity for receipt of bids by prime contractors. It would additionally require the entity taking bids to set forth in the bid invitation a date and time for closing of submission of bids by prime contractors, which shall be extended by no less than 72 hours in the event that entity issues any changes, additions or deletions to the invitation later than 72 hours prior to the bid closing.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4104 of the Public Contract
2 Code is amended to read:
3 4104. Any officer, department, board or commission
4 taking bids for the construction of any public work or
5 improvement shall provide in the specifications prepared
6 for the work or improvement or in the general conditions
7 under which bids will be received for the doing of the
8 work incident to the public work or improvement that
9 any person making a bid or offer to perform the work,
10 shall, in his or her bid or offer, set forth:
11 (a) (1) The name and the location of the place of
12 business of each subcontractor who will perform work or

1 labor or render service to the prime contractor in or
2 about the construction of the work or improvement, or a
3 subcontractor licensed by the State of California who,
4 under subcontract to the prime contractor, specially
5 fabricates and installs a portion of the work or
6 improvement according to detailed drawings contained
7 in the plans and specifications, in an amount in excess of
8 one-half of 1 percent of the prime contractor's total bid
9 or, in the case of bids or offers for the construction of
10 streets or highways, including bridges, in excess of
11 one-half of 1 percent of the prime contractor's total bid
12 or ten thousand dollars (\$10,000), whichever is greater.

13 *(2) Any information requested by the officer,*
14 *department, board, or commission concerning any*
15 *subcontractor who the prime contractor is required to list*
16 *under this subdivision, other than the subcontractor's*
17 *name and location of business, may be submitted by the*
18 *prime contractor up to 24 hours after the deadline*
19 *established by the officer, department, board, or*
20 *commission for receipt of bids by prime contractors.*

21 (b) The portion of the work ~~which~~ that will be done by
22 each subcontractor under this act. The prime contractor
23 shall list only one subcontractor for each portion as is
24 defined by the prime contractor in his or her bid.

25 SEC. 2. Section 4104.5 is added to the Public Contract
26 Code, to read:

27 4104.5. (a) The officer, department, board, or
28 commission taking bids for construction of any public
29 work or improvement shall set forth in the bid invitation
30 a date and time for closing of submission of bids by prime
31 contractors. The date and time shall be extended by no
32 less than 72 hours in the event the officer, department,
33 board, or commission issues any changes, additions, or
34 deletions to the invitation later than 72 hours prior to the
35 bid closing.

36 (b) As used in this section, the term "bid invitation"
37 shall include any documents issued to prime contractors
38 that contain descriptions of the work to be bid or the
39 content, form, or manner of submission of bids by bidders.

1 SEC. 3. Section 4106 of the Public Contract Code is
2 amended to read:

3 4106. If a prime contractor fails to specify a
4 subcontractor or if a prime contractor specifies more than
5 one subcontractor for the same portion of work to be
6 performed under the contract in excess of ~~one-half of~~ 4 5
7 percent of the prime contractor's total bid, the prime
8 contractor agrees that he or she is fully qualified to
9 perform that portion himself or herself, and that the
10 prime contractor shall perform that portion himself or
11 herself.

12 If after award of contract, the prime contractor
13 subcontracts, except as provided for in Sections 4107 or
14 4109, any such portion of the work, the prime contractor
15 shall be subject to the penalties named in Section 4111.

16 SEC. 4. Section 4107 of the Public Contract Code is
17 amended to read:

18 4107. No prime contractor whose bid is accepted shall:

19 (a) Substitute any person as subcontractor in place of
20 the subcontractor listed in the original bid, except that
21 the awarding authority, or its duly authorized officer,
22 may, except as otherwise provided in Section 4107.5,
23 consent to the substitution of another person as a
24 subcontractor in any of the following situations:

25 (1) When the subcontractor listed in the bid after
26 having had a reasonable opportunity to do so fails or
27 refuses to execute a written contract, when that written
28 contract, based upon the general terms, conditions,
29 plans and specifications for the project involved or the
30 terms of that subcontractor's written bid, is presented
31 to the subcontractor by the prime contractor.

32 (2) When the listed subcontractor becomes
33 bankrupt or insolvent.

34 (3) When the listed subcontractor fails or refuses to
35 perform his or her subcontract.

36 (4) When the listed subcontractor fails or refuses to
37 meet the bond requirements of the prime contractor as
38 set forth in Section 4108.

39 (5) When the prime contractor demonstrates to the
40 awarding authority, or its duly authorized officer,

1 subject to the further provisions set forth in Section
2 4107.5, that the name of the subcontractor was listed as
3 the result of an inadvertent clerical error.

4 (6) When the listed subcontractor is not licensed
5 pursuant to the Contractors License Law.

6 (7) When the awarding authority, or its duly
7 authorized officer, determines that the work
8 performed by the listed subcontractor is substantially
9 unsatisfactory and not in substantial accordance with
10 the plans and specifications, or that the subcontractor
11 is substantially delaying or disrupting the progress of
12 the work.

13
14 Prior to approval of the prime contractor's request for the
15 substitution the awarding authority, or its duly
16 authorized officer, shall give notice in writing to the listed
17 subcontractor of the prime contractor's request to
18 substitute and of the reasons for the request. The notice
19 shall be served by certified or registered mail to the last
20 known address of the subcontractor. The listed
21 subcontractor who has been so notified shall have five
22 working days within which to submit written objections
23 to the substitution to the awarding authority. Failure to
24 file these written objections shall constitute the listed
25 subcontractor's consent to the substitution.

26 If written objections are filed, the awarding authority
27 shall give notice in writing of at least five working days to
28 the listed subcontractor of a hearing by the awarding
29 authority on the prime contractor's request for
30 substitution.

31 (b) Permit any subcontract to be voluntarily assigned
32 or transferred or allow it to be performed by anyone other
33 than the original subcontractor listed in the original bid,
34 without the consent of the awarding authority, or its duly
35 authorized officer.

36 (c) Other than in the performance of "change orders"
37 causing changes or deviations from the original contract,
38 sublet or subcontract any portion of the work in excess of
39 ~~one-half of~~ 5 percent of the prime contractor's total bid

1 as to which his or her original bid did not designate a
2 subcontractor.

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